

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

NEWPORT-MESA UNIFIED SCHOOL  
DISTRICT.

OAH CASE NO. 2012110040

ORDER GRANTING MOTION TO  
DISMISS ISSUE SIX

On October 29, 2012, Parents on behalf of Student (Student) filed a Request for Due Process Hearing (complaint), naming the Newport-Mesa Unified School District (District) as the respondent. On December 3, 2012, Student filed an amended complaint which contained six issues. Student's sixth issue alleges that the District is in violation of Section 504 of the Rehabilitation Act of 1973, Section 1983 of Title 42 of the United States Code, the Americans with Disabilities Act (ADA), and the Unruh Act (a California law).

On October 31, 2011, the District filed a Motion for Partial Dismissal, alleging that the Office of Administrative Hearings (OAH) is without jurisdiction to hear Student's sixth claim.

OAH received no response to the District's motion.

APPLICABLE LAW

The purpose of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. § 1400 et. seq.) is to "ensure that all children with disabilities have available to them a free appropriate public education" (FAPE), and to protect the rights of those children and their parents. (20 U.S.C. § 1400(d)(1)(A), (B), and (C); see also Ed. Code, § 56000.) A party has the right to present a complaint "with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child." (20 U.S.C. § 1415(b)(6); Ed. Code, § 56501, subd. (a) [party has a right to present a complaint regarding matters involving proposal or refusal to initiate or change the identification, assessment, or educational placement of a child; the provision of a FAPE to a child; the refusal of a parent or guardian to consent to an assessment of a child; or a disagreement between a parent or guardian and the public education agency as to the availability of a program appropriate for a child, including the question of financial responsibility].) The jurisdiction of OAH is limited to these matters. (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.) Thus, OAH does not have jurisdiction to entertain claims based on Section 504 of the Rehabilitation Act of 1973

(29 U.S.C. § 701 et seq.), the ADA, the Unruh Act, or Section 1983 of Title 42 United States Code.

ORDER

The District's Motion to Dismiss Student's sixth claim made pursuant to Section 504 of the Rehabilitation Act of 1973, the ADA, Section 1983 of Title 42 of the United States Code and the Unruh Act is GRANTED. All such claims are hereby dismissed. The matter will proceed as scheduled as to the other claims alleged.

IT IS SO ORDERED.

Dated: December 21, 2012

/s/

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ROBERT HELFAND  
Administrative Law Judge  
Office of Administrative Hearings